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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

JIMMIE G. BILES, JR., M.D.,

Plaintiff,

v.

JOHN HENRY SCHNEIDER, JR. and
MEDPORT, LLC,

Defendants.

Civ. No. 19-CV-48-F

**PLAINTIFF'S MOTION FOR EXTENSION OF PLAINTIFF'S
EXPERT DESIGNATION DEADLINE**

Plaintiff, by and through his counsel, R. Daniel Fleck, M. Kristeen Hand, and Sarah A. Kellogg of THE SPENCE LAW FIRM, LLC, hereby files his Motion for Extension of Plaintiff's Expert Designation Deadline, and states as follows:

On November 15, 2019, this Court issued its Order on Initial Pretrial Conference. ECF # 66. The Court's order set the deadline for Plaintiff's designation of expert testimony as April 15, 2020. On March 24, 2020, the Court granted Plaintiff's Motion For Extension of Expert

Designation Deadline, extending Plaintiff's designation deadline through May 29, 2020. ECF # 73. On May 26, 2020, the Court granted Plaintiff another extension, extending expert deadlines through July 13, 2020. ECF # 87.

Thereafter, on May 28, 2020, the Court granted Plaintiff's Motion to Compel, ordering Defendant MedPort, LLC ("MedPort") to more fully respond to the discovery served by Plaintiff on January 24, 2020, and to produce certain financial documents on or before June 15, 2020. ECF #88. MedPort supplemented its production on June 15, 2020 — although MedPort's production is still incomplete. For example, in response to Request No. 12, which sought documents relating to MedPort's dissolution, MedPort represents that it is in the process of creating additional documents, which will forthcoming shortly. Ex. A, MedPort's Supp. Resp. to RFP 12. Moreover, in light of MedPort's recent production, which confirms that MedPort took no formal steps to wind up its affairs, Plaintiff has served additional discovery, which is still pending. Ex. B, Plaintiff's Second Discovery to MedPort.

Then, on June 19, 2020, the Court granted Plaintiff's Motion for Partial Summary Judgment, entering judgment for liquidated damages against Defendant Mr. Schneider. ECF # 93. Plaintiff believes that the Court's order on summary judgment obviates the need for most expert testimony in this case. Nevertheless, an outstanding issue is whether MedPort is bound by the Settlement Agreement (as a surrogate or alter ego), and therefore jointly liable with Mr. Schneider. To that end, Plaintiff may designate a forensic accountant to examine the relationship between MedPort and Mr. Schneider.

Frankly, at this time, it is not clear to Plaintiff that any expert testimony will be required — it appears that MedPort plainly failed to follow corporate formalities at the time that Mr. Schneider used its website to post his attorney's confidential interviews. Moreover, counsel is

working together in the hopes of scheduling a mediation, which could save the parties the time and expense of further discovery and expert designations. Nevertheless, out of an abundance of caution, Plaintiff respectfully requests an additional forty-five (45) day extension of his expert deadline. Plaintiff intended to raise this issue with the Court during the status conference previously scheduled of July 9, 2020. When the Court reset the status conference to July 20, 2020, Plaintiff promptly raised these issues via this Motion.

I. RULE 7.1 COMPLIANCE

Pursuant to Local Rule 7.1, Counsel for Plaintiff conferred orally with counsel for MedPort, LLC (“MedPort”). Specifically, immediately upon hearing that the status conference was vacated, Sarah Kellogg, counsel for the Dr. Biles, spoke to Gregory Costanza, counsel for MedPort, on July 9, 2020 via telephone. Mr. Costanza represented that he would reach out to Mr. Schneider to confirm MedPort’s position. Mr. Costanza has since represented that Defendants oppose the Motion, although Defendants have not shared the basis of their opposition.

II. ANALYSIS

There is good cause to extend Plaintiff’s designation deadline. Plaintiff did not receive meaningful responses to his January 24, 2020 discovery request to MedPort for nearly six months. Even now, MedPort continues to represent that additional dissolution documents may be forthcoming. *See* Ex. A. Further, MedPort’s June 15, 2020 supplementation confirmed that MedPort did not follow the dissolution process set forth in its operating agreement, prompting Plaintiff to follow-up with additional discovery, which is still pending. *See* Ex. B. This subsequent discovery seeks information, such as:

- Distributions made by MedPort since becoming delinquent;
- Complete copies of MedPort’s filings with the Secretary of State; and
- The identity of the entity or individuals paying MedPort’s defense in this action.

Accordingly, Plaintiff believes that another short extension is warranted to ensure that he has had a full and fair opportunity to conduct discovery before deciding if expert testimony is required.

III. CONCLUSION

For all of these reasons, Plaintiff respectfully requests that the Court grant this Motion and extend Plaintiff's upcoming expert disclosure deadline by 45 days.

Dated this 10th day of July, 2020.

/s/ Sarah A. Kellogg
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion to Extend Plaintiff's Expert Designation Deadline with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following addresses:

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Attorneys for MedPort, LLC & Limited Scope Attorneys for John H. Schneider

And also, I certify this was sent via U.S. Mail to:

John H. Schneider, Jr.
BOP # 64084298
551 S. 35th St.
San Diego, CA 92113

Pro Se

Dated this 10th day of July, 2020.

/s/ Sarah A. Kellogg
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